HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.22347 of 2006

Between:

Pakala Gramabhyudaya Seva Sanstha,
Pakala, Singarayakonda Mandal,
Prakasam District,
Rep. by its General Secretary
Sri V.V. Krishna Reddy

... Petitioner

And

State of Andhra Pradesh,
Rep. by its Secretary to Government,
Irrigation & CAD (Med.Irrigatiion.I(1) Department,
Hyderabad & others

... Respondents

:: O R D E R ::

Counsel for the petitioner: Shri A.Ramalingeswara Rao

Counsel for respondent Nos.1 & 2: Government Pleader for Irrigation & Command Area Development

Counsel for respondent No.3: Government Pleader for Revenue

Counsel for respondent Nos.4 to 17: Shri T. Rajendra Prasad

February 14, 2007

Per G.S. Singhvi, CJ

Pakala Gramabhyudaya Seva Sanstha and another have filed this petition in the name of public interest litigation for quashing the administrative sanction accorded by the State Government vide G.O.Ms.ANo.33, Irrigation & Command Area Development

Department, dated 11-5-2006 for construction of reservoir across Paleru river near Chennipadu Village, Ponnaluru Mandal, Prakasam District.

The thrust of the petitioner's grievance, as reflected in the affidavit of Shri V.V. Krishna Reddy, General Secretary of petitioner No.1 is that the construction of reservoir will considerably reduce the availability of water for irrigating about 10,000 acres of land in Pakala, Bitragunta, Kalikivaya, Somarayanipalli, Vullapalem and Binginapalli villages and will also adversely affect the availability of drinking water for the population of 30,000 living in 15 villages. For better appreciation of the plea of the petitioners, paragraphs 3 and 4 of the affidavit of Shri V.V. Krishna Reddy are reproduced below:

> "3. I submit that the villagers in Pakala, Bitragunta, Kalikivaya, Somarayanipalli, Vullapalem and Binginapalli, having nearly 30,000 population are having agricultural land of an extent of nearly 10,000 acres. They used to face much hardship in irrigating their land depending on the rain water. Hence, in 1962, the Government took up a scheme of construction of Minor Irrigation Project called "Paleru Bitragunta Scheme" across Paleru river near Jillelamudi village for irrigating an estimated extent of 7,318 acres through 9 system tanks in Jarugumalli and Singarayakonda mandals. A supply channel of a length of 21.32 KM was excavated with a discharge of 145 Cusecs to supply water to 9 system tanks through distributory tanks supply channels. The catchment area extends to an extent of 2100 sq. km. and the length of anicut is 274.32 Mts. With a top level Crest of Anicut at 13.340 Mts. After construction of the said Project, the 9 tanks are getting water and we are cultivating our lands with wet crops for the last more than 4 decades.
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> 4. While so, we came to know that the 1st respondent issued administrative sanction in G.O.Ms.No.33, Irrigation & CAD Dept. dt.11-5-2006 according the administrative approval for Rs.50.50 crores for formation of a reservoir across Paleru river at Sangameswaram temple, near Chennipadu village, Ponnaluru Mandal, Prakasam Dist for the ostensible purpose of providing

irrigation facilities to 9500 acres and drinking water to a population of 30,000 living in 15 villages. It was proposed to form the reservoir with a live storage of 0.584 TMC across Paleru and its tributary of Makeru with a spillway of length 156 M, flanked by an earthen dam of total length of 2.8 KM on either side of the spillway discharge of maximum flood of 1.71 lakh cusecs. I submit that the proposed reservoir is to the west of the existing P.B. Anicut and at a higher level which would completely block the flow of water to the existing P.B. Anicut. The source of water to the Markeru river and Paleru river itself is due to rains and the two rivers converge at Ayyarajupalem and a single river goes to P.B. Anicut, wherefrom a P.B.Channel provides supply of water to the 9 tanks and provides water and irrigation facilities to the 6 villages and its ayacut. The Makeru river and Paleru river are not perennial rivers and the flow of water depends on the rains in the season. I submit that due to improper action of the 1st respondent, the water in P.B.Anicut which was constructed in 1962 is likely to dry up, drying the water course to P.B. Channel. I submit that we issued a telegram followed by a representation dt.5-10-2006 to the Hon'ble Chief Minister along with copies to the respondents and to the Hon'ble Minister for Minor Irrigation and the local M.L.A. We have not received any communication so far."

In the counter-affidavit filed by Shri B. Suryanarayana Babu, Superintending Engineer, Construction Circle, Ongole, Prakasam District, it has been averred that with a view to check the waste of water of Paleru river, the government decided to construct a Medium Irrigation Project near Chennipadu Village, Ponnaluru Mandal with a live storage of 0.584 TMC, which would provide irrigation facilities to an extent of 9,500 acres and drinking water to a population of 30,000 people. The details of the Project and its benefits, as set out in paragraph 3 (a) to 3 (d) of the affidavit of

Shri B. Suryanarayana Babu, are as under:

"3 (a) In reply to para-4, it is submitted that the Paleru River raises in Veligonda Hill Ranges at an altitude of 2600 feet or +792.5 Mts. And traverses through Kanigiri, Podili, Kandukur and Singarayakonda Mandals of Prakasam Districdt for a length of 106 kms. and joins sea. The catchment area of the Paleru

River lies entirely in Prakasam District. The entire river basin is sub-divided into 16 sub-basins depending upon the tributaries joining the Paleru River. There are no existing Major Irrigation Projects on this river except some Minor Irrigation tanks and Medium Irrigation Scheme called Paleru – Bitragunta Anicut Scheme. The entire yield from the river is going waste into the sea except a minor fraction on the above Minor and Medium Irrigation Schemes. The villages in the river basin are frequently subjected to droughts and they are most backward areas of the Prakasam District.

(b) It is submitted that considering the above, the Government of Andhra Pradesh proposed to construct a Medium Irrigation Project across Paleru River near Chennupadu Village, Ponnaluru Mandal, Prakasam District, with a live storage of 0.584 TMC to provide Irrigation facilities to an extent of 9500 acres and drinking water to a population of 30,000 living in 15 villages vide G.O.Ms.No.33, dt. 11-5-2006. This project consists of formation of Earth Dam for a length of 2.8 Km and a spillway to discharge maximum flood of 1.71 lakh cusecs and Right and Left Canals for Irrigating 9500 acres of Irrigation dry crops in the following villages.

S.No.	Village	Ayacut in Acres
	Right Main Canal	
1.	Chennipadu	109
2.	Patchavbalagopala puram	653
3.	Ravulakollu	2170
4.	Vellaturu	261
5.	Uppaladinne	307
	Left Main Canal	
6.	Ayyaparaju Palem	715
7.	Tangella	57
8.	Vardinenivari Palem	261
9.	Patcheva	2039
10.	N.N. Kandrika	452
11.	Kamepalli	1150
12.	Kamepalli Agraharam	472
13.	Netivari Palem	854
	Total:	**9500**

All the above villages have no alternative source of water for irrigation or drinking water unless otherwise the proposed project is constructed.

(c) It is submitted that the proposed Paleru Reservoir Project falls at the end of 12th sub-basin of Paleru river (The entire river is sub-divided into 16 sub-basins) and the existing Paleru Bitrugunta Anicut Scheme, which is situated at a distance of 23 Km. on down stream of the proposed reservoir, falls at the end of 14th sub-basin of Paleru River. As per the Hydrological studies carried out by the Chief Engineer, Hydrology, Hyderabad, the availability of water for the proposed Paleru Reservoir after meeting 1) the upper riparian Rights, which consists of 19,755 Acres under Minor Irrigation tanks and the lower riparian rights, which consists of 7318 acres under Paleru Bitragunta Anicut scheme ayacut and small lift irrigation schemes, is as follows:

1.	Total catchment area up to proposed reservoir (i.e. up to end of 12th sub-basin)	1824.5 Sq. Km.
2.	Catchment area between the proposed reservoir and Paleru Bitragunta Anicut scheme (i.e. between 12th sub-basin and 14th sub-basin)	321 sq. km.
3.	The 75% dependable yield up to the proposed reservoir (i.e. up to end of 12th sub-basin)	5.114 TMC
4.	Up stream utilisation above the proposed reservoir site for 19,755 Acrs. Under Minor Irrigation tanks.	3.012 TMC
5.	Net yield available at the proposed reservoir site after meeting upper riparian rights. (5.114 – 3.012) = 2.102 TMC	2.102 TMC
6.	The total demand for the ayacut, drinking water and evaporation losses under the proposed reservoir.	0.80 TMC
7.	Balance yield available at the reservoir site (2.102 – 0.8) = 1.302 TMC	1.302 TMC
8.	Yield available from the catchment between proposed reservoir and Paleru Bitragunta Anicut scheme (i.e. 12th sub-basin and 14th sub-basin)	0.901 TMC
9.	Total yield available at the location of Paleru Bitragunta Anicut (1.302 + 0.901) = 2.203 TMC	2.203 TMC
10.	The demand for lower riparian rights which consists of Ayacut under Paleru Bitragunta Anicut and ayacut minor lift irrigation schemes.	0.815 TMC
11.	Taking the double the requirement of lower riparian rights, net dependable available water at Paleru Bitragunta Anicut (2.203 – 0.815 x 2) = 0.573 TMC	0.573 TMC

The water still available at Paleru – Bitragunta Anicut after meeting all the demand under lower riparian rights is 0.573 TMC.

(d) From the above, it is clear that the available dependable water at reservoir site is much more than the reservoir capacity after meeting all the lower riparian rights. Further, a low level sluices is also proposed in the spillway of the reservoir to protect the lower riparian rights whenever need arises.

In view of the above, the contention of the petitioner that by constructing the reservoir across Paleru River at Sangameswara Temple near Chennupadu Village would block water flow completely to the Paleru – Bitragunta Anicut is not correct. It is further submitted that the seepage or regenerated water from the Ayacut of the proposed reservoir will again join river down stream and above the Anicut, which is an added advantage for the existing scheme."

In para 5 of his affidavit, the deponent has averred that after receipt of the administrative sanction, investigations, designs and estimates of the proposed reservoir are under process and tenders will be called after obtaining technical sanction from Chief Engineer (Projects), Ongole.

Shri Ch. Venkateshwarlu, respondent No.5 has filed separate affidavit on behalf of respondent Nos.4 to 17. He has justified the construction of reservoir by asserting that the government has done so to prevent recurrence of drought conditions due to non-availability of water. In paragraphs 3, 4 and 5 of his affidavit, Shri Ch. Venkateshwarlu has averred as under:

"3. I humbly submit that we are all agriculturists and our only source of income and our livelihood is agriculture. It is true that the government issued G.O.Ms.No.33,
dt.11-5-2006 for formation of Reservoir across Paleru river, near Chennipadu village, Ponnaluru Mandal to provide irrigation facilities to 9,500 acres of land and drinking water to a population of 30,000 people in 15 villages. The government accorded administrative approval for an amount of Rs.50 crores for the formation of the Reservoir. It is true that it was proposed to form the Reservoir with a live storage of 0.584 TMC across Paleru and its tributary of Makeru with a spillway of length 156 M, flanked by an earthen dam of total length of 2.8 Kms. on either side of the spill way discharge of maximum flood of 1.71

lakh cusecs. On the representation submitted by the farmers of the drought effected areas, the government has taken the said decision after careful examination and detailed investigation of Reservoir across Paleru river in the interest of several villages of three Assembly Constituencies. In the year 2002 itself, the government issued G.O.Ms.No.208, Irrigation & CAD (IRR.XI.2) Department, dt. 27-12-2002 and accorded administrative sanction for taking up detailed investigation of Reservoir across Paleru river and now the government issued G.O.Ms.No.33, dt.11-5-2006 after detailed investigation and examination.

4. I humbly submit that a Reservoir is originally proposed across Paleru river near Minthumvaripalle village with 1.35 TMC capacity to provide irrigation facilities to an extent of 7,000 acres through right main canal and 8,000 acres through left canal in addition to the drinking water facilities to 50,000 population. After administrative sanction for taking up detailed investigation, they have started investigation and at the stage of the farmers of that area i.e. near about Minthumvaripalle site objected for taking up survey work stating that one famous temple called Gangamma Temple and their costly lands will be submerged in the reservoir. Therefore, the location of the reservoir is shifted to the confluence point of Paleru and Makeru rivers i.e. roughly 5 kms. distance taking into consideration several negative factors. They have taken up necessary survey work and after survey they have submitted a report that the total Ayacut that can be benefited by the new proposal is 9,500 acres. As per the said report, there is no submersion of villages in the reservoir and therefore the said proposal is satisfied the farmers of three assembly constituencies. T h e Gangamma Temple is also safeguarded and thereby the sentiments of the people will not be effected and it will provide water facility to several villages both for irrigation and drinking.

5. I humbly submit that the contention of the petitioners that due to the said action of respondent No.1, the water is likely to dry up, drying the water source to P.B. Channel is totally incorrect. In fact, formation of reservoir across Paleru river will not create any hardship to any of the villages mentioned in the writ petition. Sufficient and more water is available for formation of reservoir. The government has taken such a decision to provide required water facilities to 15 villages including the villages of the petitioners herein as we have no alternative

source of water either for irrigation or drinking. Our only livelihood is by way of agriculture and we have no other source of income. The government is also taking all precautions to protect the interest of the villages mentioned in the writ petition, by forming low level sluices. The construction of reservoir across Paleru river would not block water flow to the Paleru and it would not effect the inflows of the water. In fact, more water is available and if the reservoir is not constructed, most of the water will be wasted as the said water will go to the sea i.e. Bay of Bengal. Paleru river originates from the Nallamala range of hills at an altitude of 2600 feet and water flows through Prakasam District and discharges into the B a y of Bengal crossing the National Highway No.5 between Tangutur and Singarayakonda. The length of the river is 120 kms. and major tributaries joins the Paleru river at Domaleru, Neralla Vagu, Marella Vagu, Makeru, Kangaleru etc. No reservoirs were constructed on this river and only an ayacut was built to divert around 830 m.cft. of water into P.B. Canal. Thereafter, on the representations submitted by the farmers of the draught stricken areas, the government has ordered to investigate to form a reservoir to meet the irrigation and drinking water requirements of several villages and it is not to cause any hardship to any other villages. The government has taken such a decision to protect the interests of all the villages including the villages mentioned in the writ petition and the construction of the reservoir will not cause any hardship to the said villages and it will not effect the rights of the villagers of the said villages. If the reservoir is not constructed, our rights will be effected and we will loose our livelihood and even if it is constructed it will not effect the rights of the villages mentioned in the writ petition, therefore, there are no merits in the writ petition and the same may be dismissed in the interest of justice."

We have heard learned counsel for the parties and carefully scrutinised the record. In our opinion, the petitioners have miserably failed to make out a case for judicial interdiction against the construction of reservoir, which is intended to save the water of Paleru river for the benefit of large segment of farmers who are badly hit due to drought conditions. The apprehension of the petitioners that the construction of reservoir may lead to reduction in the availability of

water for irrigating the land and drinking by the population is sufficiently dispelled by the facts and figures provided in the affidavit of Shri B. Suryanarayana Babu and we see no reason to restrain the official respondents from executing the project relating to construction of reservoir more so because the petitioners have not controverted the fact that 0.573 TMC water will be available at Paleru – Bitragunta Anicut after meeting all demands under the lower riparian rights.

We are further of the view that in matters like construction of reservoir or execution of other projects meant for the benefit of the people of the rural areas, interventions by the Courts at the instance of one or more interested parties is totally unwarranted. The political and executive apparatus of the State enjoy substantial freedom in the matter of taking policy decisions in the matters relating to construction of dams, reservoirs and other irrigation projects, highways and roads and creating infrastructure for development. The government has the exclusive prerogative to take appropriate decision in these matters. The Courts neither have the expertise knowledge nor there is any warrant for spacious intervention which may hamper, obstruct or delay execution of people oriented projects.

With the above observations, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.28384 of 2006 filed by the petitioners for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 14, 2007

svs